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CONSTITUTIONAL STRICTURES

ON

PARTICULAR POSITIONS

ADVANCED IN THE SPEECHES OF

THE RIGHT HON. WILLIAM PITT,

IN THE

DEBATES which took place on the UNION between GREAT
BRITAIN and IRELAND, on the 23d and 31st of
January, 1799.

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BY

WILLOUGHBY, EARL of ABINGDON.

Est quidem vera lex, recta ratio naturæ congruens, diffusa
in omnes, constans, sempiterna, quæ vocet ad officium
jubendo, vetando a fraude deterreat.

Cic. de repub. lib. 3. Fragment.

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H2 Lee

SIR,

TRUTH being my object, an irresistible basis, on which I have ever stood, having in *Limine*, on the very outset of my political conduct, in an answer to a Letter of Edmund Burke, Esq. to the Sheriff of Bristol, on the *Affairs of America*; as well as in a Dedication to the *Collective Body of the People of England*, in which our *Political Distractions are pointed out, and a Plan proposed for their Remedy and Redress*, opposed a *System*, which I have demonstratively proved, from the first authorities, to be baneful, destructive, and inimical to the liberties of this country; I little expected to hear, at this critical juncture of affairs, from so near a descendant of the late Earl of Chatham, the doctrine of Parliamentary Omnipotence absolutely justified on principle, with a pledge that "no dereliction of friends, no loss of property, should deter the Minister from prosecuting a measure, to the attainment of which, he should devote his very political existence."—I agree with you, Sir, that the

Constitution of Great Britain, being in its nature fixed on an immutable basis, cannot be touched or altered, but by the *Collective Whole* which framed it, and which of course cannot rest in “*abeyance*.” But if the doctrine which you have so lately advanced in your last Phillipic, from the Treasury Bench to the *Representatives* of the People, is to be admitted, or driven into execution, “That no national assemblage of men can exist under heaven, without *delegating* a *supreme unlimited power* to their government : the question whether that government exceeds the *powers necessary to the preservation of society, or abuses it to its dissolution*, is a question of perilous responsibility, too delicate to come within the code of human legislation, or form a chapter of human jurisprudence!” I answer, Sir, that *responsibility*, however *perilus*, is ever to be looked for and expected in a *free state*; and as for the dangerous infallibility of parliamentary power, if once admitted and *legalized*, it would be a power with a witness indeed! putting the cart before the horse, avowing the *Government* to be transcendent to the Constitution, and the Constitution very little more than alledged to be in “*abeyance*;” but in actual unlimited OBEY-

ANCE to the *Will* of our present Rulers, the Imperial Statesmen of this Realm.

Quod ab initio non valet, in Tractu Temporis non convalescit ; and what folly and madnes is it to prescribe remedies for the *feet*, when the disease lies in the *head* ! per scelera, semper sceleribus certum est iter ; et *Qui non repellit a proximo injuriam si potest, tam est in vizio quam ille, qui infert.*

Will any man assert, that our ancestors ceded to the King and Parliament, the *power* of disposing, *without their consent*, of both their *lives, liberties, and properties*? A doctrine which appears to me so extravagant and unaccountable, that I cannot possibly conceive, that the height of Toryism, or the vilest tool of *Tyranny*, even if paramount to the noted Sacheverel himself, did ever presume to support such a *dogma*: nor can I believe, that by *all* the art of rhetorical sophistry, any serious, enlightened person, can swallow such tenets, or that such are consistent with either Law or Gospel.* If

* The Gospel does not invade the rights of mankind, nor invest men with authority destructive to society.

any ambitious man can be so intoxicated and infatuated as to pronounce, that *all the natural and unalienable rights* of mankind are ceded and forfeited for ever, by any *social compact*, made for the support and maintenance of the *people themselves*, I must consequently think him, as fit, if not fitter, for the straight waistcoat, than most other fanatics of the present enlightened age (as it is deemed) we live in. I shall here, without apology, introduce a letter received by me, from the late Sir William Jones, with my answer thereto, (pending my warm attachment to, and connection with the Marquis of Rockingham, who with honour to himself presided over and cemented the *Whig Party*) specifically treating of the *limitation* of the *three estates*, and their original institution.

Univ. Coll. Oxford,
October 5, 1782.

MY LORD,

IT must appear strange, that I should have taken two years to answer a most obliging letter from your Lordship, which I found

found on my return from Paris, though it was intended to reach me before I left England. The truth is simply this.—The letter being accompanied with a present of your Lordship's excellent pamphlet, for a venerable friend of mine at Passy,* and containing a message which could not but be highly flattering to him, I sent the book by the first opportunity, *which I thought safe*, together with a letter from me, informing the old Philosopher, that the work was a present from its noble author, who had charged me with compliments to him, which I repeated nearly in your Lordship's words. From month to month I remained, expecting an answer from him, or an acknowledgment of the receipt of my packet; and this expectation occasioned my delay in writing to your Lordship. The affairs of my friend and client having once more called me to Paris, I was surprised to hear from Dr. Franklin, that

* Dr. Franklin, of whom, when brow-beaten at the Cockpit, Lord Chatham asserted, that his Examiners had persecuted a man, who had more State and Continental knowledge than all His Majesty's Ministers put together.

he never received the packet or letter: he begged me however to assure your Lordship, that he considered the present *as* received, was much flattered by your kind attention, and highly sensible of the honour you had done him. This plain account of a plain fact will, I trust, convince you, my Lord, that my delay proceeded not from any Neglect, but on the contrary, from a long state of attention to your commission, and the subject of your letter, as far as it related to my good friend, near Paris. As to that part of it, which concerned myself, I can never be sufficiently thankful for your Lordship's kindness. The despair, which I had strongly expressed in my letters, of enjoying the sweets of liberty in this country, has been succeeded in my mind, by a lively hope of seeing constitutional freedom restored, and every attainable good attained, under the present administration. *My wishes have been uniformly the same, to keep the three powers in our state, within their just limits, measured by the equal balance of the law,* and if we must lose America,* to unite her to us
as

* Lord Chatham declared, that when America was lost, the Empire was dwindling and falling asunder; and that that

as nearly as possible by some common interest. Whether my system agrees with that of my most respected friends, I do not perfectly know; but this I hold for certain, that every citizen ought to act according to the best exertions of his intellect, and to the satisfaction of his conscience. I was lately on the point of seeing America with a friend and client who has a large estate in danger of confiscation, and had importuned me to accompany him; but as no tolerable ships could sail till late this autumn, I could not have kept my engagement with my friends here to return before Christmas. This was, I confess, a disappointment to me, as I should have been pleased to visit such a country at such a time. If I live to be old, I intend, as the *subsidium senectutis*, to write a faithful history of this unhappy war, not from other books, but from actual knowledge of men and of things, taking Thucydides and Polybius for my models. I write this freely to your Lordship, as

that disease would, sooner or later, reach the vitals of Great Britain.

How far the convulsions of Ireland are symptoms of the cancerous progress of this *State-mania*, wiser heads than my own will decide.

Mr.

Mr. Molyneux did to Locke, without being personally known to you ; but I am encouraged by the kindness and opennes of your letters to me, and by your obliging advice and assistance at this place ; for which I shall ever be, with a high sense of the obligation,

My Lord,
Your Lordship's most grateful
and very obedient Servant,

WM. JONES.

The Earl of Abingdon,
Wytham, near Oxford.

Wytham, Oct. 10, 1782.

SIR,

I HAVE had the honor of your letter, and am as much favoured by its contents in general, as obliged in particular by the part you took in endeavouring to convey my pamphlet to the hands of your good friend, the Philosopher of Passy. The respect I have both for his head and heart led me to impose the trouble I did upon you ; and as I conceived that I did not differ in sentiment from him upon the subject

subject I treated, I was the more presumptuous in wishing to convey my thoughts to him.

The promise you make of a faithful history of this unhappy war is no less worthy of yourself, than of the subject. There is nothing that posterity will look for so much, nor is there any body more likely than yourself to gratify their expectations. Such a history of such a war will be to politics, what holy writ was to religion. It will lead men to repentance, and make humanity, for the perversion of its nature, out of countenance with itself. Nor will the choice you have made of your models be less a friend to your subject.

I am glad to find that we are both gravitating as we are, to the same centre in our politics, as well with regard to our present Governors, as our Government. Of the latter, I always conceived, that the three powers of the state were not only individually, but collectively, *limited*. That each was limited as to the privileges, and *all* as to the fundamental and unalienable Rights of the People, which no law can touch, nor power take away, whilst the

Constitution remains. Of the other, my opinion ever was, and is, that the Constitution of this Country is the object of their preservation; and, being persuaded, that they will go as far in the attainment of this, as an unprincipled Country, such as this now is, will admit, they will not want my best and warmest support.

I know not whether to congratulate you or not, upon your disappointment in not going to America. If we are sober and wise in our conversion here, as I dare say we shall, America, I trust, will come to us, and prevent you from the trouble of going to her.

With my best hopes that you will be more successful in your next attempt in pulling down the standard of Toryism at Oxford, and in erecting that of Whiggism in its place,

I remain,

Sir,

Your most obedient,

Humble Servant,

ABINGDON.

To W^m. JONES, Esq.
University Coll. Oxford.

The

The next authority against a power in Parliament *unlimited* and *unrestrained*, is quoted from the late illustrious Earl of Chatham,

The great Charioteer of Truth,
And safest Guide to inexperienced Youth;

in one of his unparalleled speeches in the House of Lords.

“ Resistance to your acts was *necessary* as it was *just*; and your *vain* declarations of the *omnipotence of parliament*, and your *imperious* doctrines of the *necessity* of *submission*, will be found equally impotent to convince or enslave your fellow-subjects in America; who feel that *tyranny*, whether *ambitioned* by an *individual part* of the legislature, or *the bodies who compose it*, is equally intolerable to British subjects. The means of enforcing this *thraldom* are found to be as *ridiculous* and *weak in practice*, as they are *unjust in principle*.”

I must now, Sir, advert to another very conspicuous part of your late speech, the question of the *Regency*, replete with “ Facts melancholy, perilous, and deplorable.” I was in hopes,

Sir, that subject would have rested *pro tempore*, at least in the present reign in “*abeyance*.” I remember, Sir, I took a very active part in my legislative capacity in that business, with a sort of *presentiment* that old *Lear would be King again**. I must agree with you, however, that if a question has arisen of such a dangerous tendency, we are not only authorised, but rather compelled, by the irresistible dictates of our duty, and our conviction, to provide against any future contingency; and shocked as I am to see a question of such delicacy (and by a Minister in office too!) revived during the present reign; yet since it has had a species of resurrection, it will be necessary to give it a constitutional *quietus*, which I shall attempt to do, after commenting in a small degree on the strange proceedings at that horrid moment, and the *incongruity* of parties.

I shall first of all, without any comment, re-publish the Protest of the House of Lords, without introducing the censure which passed from Lord Thurlow’s mouth, the preceding Chan-

* Vide Woodfall’s Parliamentary Debates

cellor, on some of the individuals who subscribed it, in order that you may learn, what advantages may be gleaned from the spirit of it to your present romantic doctrine of *un-limitation*.

PROTEST OF THE LORDS, ON THE REGENCY.

The order of the day being read for taking into consideration the report of the Committee of the whole House, appointed to take into consideration the State of the Nation, and the Resolutions of the Commons relative to his Majesty's indisposition, and the means of supplying the defect of the personal exercise of the Royal Authority arising therefrom, delivered at a conference on the 23d of December instant, which were referred thereto. And the Report of the said Resolutions being read by the clerk,

Moved to agree with the Commons on the said Resolutions.

The question was put thereupon.

Resolved in the affirmative.

Dissentient.

First.—

First.—Because we adhere to the ancient principle recognized and declared by the act of the 13th of Charles the Second, that no act or ordinance with the force and virtue of a law, can be made by either or both Houses of Parliament, without the King's assent, a principle standing as a bulwark to the People against the two Houses, as the two Houses are their security against the Crown.

Secondly.—Because this principle is tacitly admitted by the third resolution, while it overthrows the practice by the similitate appearance of the Royal assent, under a commission, to pass bills, a commission which would be inconsistent with the provisions of an act of the 33d of Henry the Eighth, requiring that every commission shall be signed by His Majesty's hand. In our present unhappy situation, that essential requisite being unattainable; we cannot condescend to give a sanction to a counterfeit representation of the Royal signature, and we dare not assume a power to dispense with the law, which makes that signature essential to the validity of a commission to pass bills.

Thirdly.—

Thirdly.—Because we conceive, that the UNQUESTIONABLE RIGHTS OF THE PEOPLE, so fallaciously represented as being upheld by these resolutions, are *violently infringed* by an unnecessary assumption on the part of the two Houses, of POWERS, beyond those which the NATION has ASSIGNED them. Invariable practices in all *good times*, and positive laws established by compleat parliaments, *truly and constitutionally representing the nation*, have DEFINED THOSE POWERS. And we cannot but regard with the utmost apprehension, any proposal to *overstep those boundaries*, when the consequence of such usurpation is so fatally marked in the history of our country.

Fourthly.—Because it was confessed in the debate, that the powers of this commission were not to be confined solely to the act of appointing a Regent; to what other purposes they may extend were not explained. *State necessity*, the avow'd ground of the measure, may serve as the pretext to any diminution of the just prerogative of the crown, and of the liberties of the people, that best suits the designs of AMBITION. Fatal experience had shewn

shewn to our ancestors the *boundless mischief of power thus usurped, under plausible appearances:* and it is particularly the duty of the House of Peers, to check the renewal of a practice to assume the name, without the substance of the Royal authority, by which this House was once annihilated, the Monarchy overthrown, and the Liberties of the people subdued.

Fifthly.--Because these dangerous and alarming consequences of the measure adopted, would have been obviated by the amendment rejected. It proposed to substitute a measure conformable to the practice of our ancestors at the glorious æra of the revolution. They seized not upon public necessity, as a convenience for the usurpation of *new powers*, but proceeded in a plain and explicit form, to the revival of the Royal authority with full efficacy, before they entered upon the exercise of their legislative functions. Pursuing a similar course, the amendment proposed the immediate nomination of the natural representative of the King, the Heir Apparent of the Crown, to whom alone, it was universally admitted, the eyes and hearts of all men, during the present

sent unhappy conjuncture, were turned : that with a perfect and efficient Legislature, such future provisions might be enacted, as the preservation of the full and undiminished authority of the Crown, and the Liberties of the People, may require.

Signed by 46 Peers.

With respect to the *Irish* Commissioners, I am of opinion, that however legislatively deputed, and right upon their own premises, yet they *blundered* most egregiously after their arrival in England ; and in point of judgment and delicacy, ought not, according to the then existing circumstances, to have presented the petition. The debates in both Houses of Parliament went to the actual *bona fide right* of his Royal Highness's Constitutional succession to the *Regency*. I shall here insert the pledged *quietus* in a species of Syllogism ; and will say, that no *Subject* has a *Right* to the Regency : and, upon a supposition that those premises are undeniable, my Syllogism stands thus :

SYLLOGISM.

No *Subject* has a *Right* to the Regency.

The Prince of Wales is no more than a *Subject*.

ERGO

The Prince of Wales has no Right to the Regency.

You proceed to observe, that with respect to Ireland, “The religion of the state is on one hand, that of the bulk of the people on the other, and the property of the country in the hands of the smaller number. It must unquestionably be *a very excellent and strong system* that can provide for all the defects of such a state. Distracted as it is, with the agitation and inflammation of *religious* opinion, it may *probably* be for some years the subject of *discord*. I believe no man will say, that a *full* concession to the Roman Catholics of their claims can take place in the actual situation of the kingdom.” I beg leave to say, Sir, that I am now deprecating any discussion upon that point, but I have no difficulty in saying, that two propositions, with respect to that subject, are, in my opinion, indisputable. And I do not hesitate to assert, that if ever the day should come, in which it would be thought just and expedient, to admit them to the full parti-

participation of all the privileges enjoyed by their fellow-subjects; such a measure would, in the United Parliament, be free from every prejudice and party motive, which might be supposed must prevail in the Parliament of Ireland. An impartial Legislation, far enough removed from the scene of contention to act as the common parent of all, and influenced only by the dictates of temper, candour, moderation, and a strict attention to the respective claims of the different parties, and to the common interests of the whole empire, would be better adapted to decide than any other Assembly. *If* the Legislature were not local, but impartial, the Catholics and Protestants would consequently be in the judgment of men divested of every prejudice, and intent only upon promoting and establishing on a satisfactory and permanent basis the rights of the various claimants. But, Sir, whenever that time shall arise, the question of concession will be perfectly free from every local consideration, and the Catholics will be put under the impartial protection of an *unprejudiced* Legislature.

In a note of page 37th of the Dedication to the *Collective Body* of the People of England, (which Pamphlet Mr. Jones states the Philosopher of Passy never to have received, “*though thought safe*”) you will find that very *excellent and strong system* prescribed as the only remedy, and in my apprehension a full provision against distraction of religious opinions; which you say may “*probably* be for some years the subject of discord.” But if this should not prove adequate, it is to be hoped there will be found in this country a sufficient number of friends to the *Established Religion*, which so liberally grants *toleration* to all others, to secure it from the *intolerance* of any Republican sectaries whatever. And particularly with regard to the *Popish Religion*, to carry in mind what the sagacious Sir Richard Steele has advanced on that restless body, who “*aim at an universal empire over the bodies, souls, and especially the ESTATES of all mankind.* A sort of UNIVERSAL SPIRIT insinuating itself, as far as it can into every particle of the universe; extending *itself far and near*, and even where it seems most to lie *dormant and lifeless*, always retaining the principles of *life*; ready to awake, and

and put all things around them into motion, upon every occasion that offers itself. Of what vast importance is it then to be *watchful*, zealous, and united against the assaults of so formidable an enemy, which threatens all equally with *persecution*, *idolatry*, *tyranny*, *slavery*, and *poverty*."

My only aim, Sir, with due respect to your great abilities, being, as I originally professed, the attainment of *truth*, and the preservation of our excellent Constitution in its original purity, both in church and state, as *sacredly* delivered to us by our ancestors, for the safety and dignity of the *whole*, the *governors* and *governed*; I must submit to your philosophical consideration an extract from a work (already quoted by me in the Dedication before alluded to) full of instruction for the present *moment*, "*Reasons for Uniformity in the State, by Roger Acherley, Esq. being a Supplement to that most admirable work of his, the Britannic Constitution.*"

This excellent Author says, "The design of this Supplement is, to unite the two contending parties of *Whigs* and *Tories*, in the true notion of the Constitution of the British Kingdom

Kingdom and Government, as the *only expedient* to pull up by the roots all seditions, tumults, treasonable conspiracies, rebellions, and even party distinctions, except that one, viz. *Of those who are for the British Constitution, and those who are against it, being a distinction that ought to be perpetual*: which desired end can never be effected, without an act for Uniformity, and for that purpose to shew, &c."

Again: "The insecurity or infirmity of the Constitution in the State, ariseth from the want of uniformity in men's minds, *and for want of the people's knowing it*; and from their disputations and questions about what *are*, and what *are not*, the fundamental parts of the Constitution."

He likewise says in his Dedication, "The people of ancient Greece and Rome treated such men as introduced good laws, with uncommon honour. It is therefore apprehended, that if uniformity in the State were enacted in Great Britain, it would produce a national stability meriting equal honours; for as much as the fluctuating opinions, about what are the fundamental rights of the Crown, and what of the People, have often engaged the governors and

and governed in hostile contentions, rendering the nation weak by divisions, which, in former times, excited neighbouring Potentates to invade and wrest away those very rights both parties contended for; and *in our times*, unquestionable authority hath informed us, that the same causes are engendering the same effects."

Philosophers and experienced Statesmen have ever agreed, Sir, that there is one thing that is *ultimate* and *chief*; so ought there to be one thing *first* which may be the foundation of all our views and desires. Can the immaculate Legislators of our present Government in these miserable, distracted times, seriously think that they shall ever obtain peace and good will on earth, or the reward proposed to the maintainers of them *hereafter*, until the Constitution be restored to its *primitive* perfection? They may as well expect the needle of the compass to quit its trepidation before it points at the North Pole, as by other measures to find tranquillity in the land. Let your father's *ever living* principles be your guide; exert the whole of your influence and authority towards a definition of our unparalleled

Constit.

Constitution*; that every distinct branch of the legislature, and every individual member of its component parts may know, that it is incumbent upon them to be conversant with those fundamental rules by which they are to regulate their *own* conduct, as well as that of others; and not only in the august assembly

* Petyt in his discourse, not very favourable to the modern doctrine of *unlimitation*, on the antient Right of the Commons of England, (citing at the same time Coke, in support of his assertion) observes, “*A le Commune d'Angleterre.*” Here *Commune* is taken for *people*, so as *TOUT LE COMMUNE* is here taken for *ALL THE PEOPLE*; and this is proved by the sense of the words: for *Magna Charta* was not granted to the *Commons* of the Realm, but generally to *all the subjects* of the Realm, viz. to those of the Clergy, and to those of the Nobility, and to the *Commons* also. And that *Commune* in this place signifieth people, it is proved by the preamble, for there the great Charter, and the Charter of the Forest, are rehearsed to be granted by King Hen. III. to his people; and here they are said to be granted *A le Commune*. And see before 25 of Edw. I. confir. chart. cap. 1. and cap. 6. for this word *Commune* and *Comminaltie*: so as *A le Commune* here signifieth not to the *Commons* of the Realm, but to the people of the whole Realm; and herewith agree our books, for that a common nuisance which concerns *le commune ou le comminaltie le suite ferra donc au Roi*, where *Commune* & *Comminaltie* include all the King's subjects.
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in which they are seated, but in the *whole Kingdom*, communicating a blessed influence (it may be hoped) over the most distant parts of our wide and extended Empire. Let the Constitution be preserved, uncorrupt and unimpaired, both in Church and State, that men may learn to love the statutes of the Lord, “above pure gold and precious stones.” that the Constitution of Great Britain, like the *word of God*, may operate, (not like an *ignis fatuus*,) but “as a lantern unto our feet, and a light unto our paths;” that *the people* of the earth may know and claim it as their *heritage*, and apply their hearts for the sake of succeeding generations to preserve it, vigorous, flourishing, and untainted to the latest posterity !

You will, Sir, of course, perceive that I am fully persuaded that no *Union*, nor any plan whatever can be effectual, without recurring to first principles, and primary foundations, so repeatedly confirmed by the whole spirit of *Magna Charta*; written (it is to be wished) in every man’s heart, and which can never be either *augmented*, or *diminished*, or *abrogated*. *Nec per senatum aut populum solvi hac lege possumus.* No power can dispense with this

this law, nor doth it need any interpreter to explain it; but like the immutable law sublimely expressed by the Roman orator, “*Non erat alia Romæ, alia Athenis, alia nunc, alia post-hac, sed & omnes gentes, omni tempore, una lex & sempiterna & immutabilis continebit.*” It is the same in all places, and in all times, as proceeding from the *supreme Lawgiver*, towards whom, he that will not yield obedience, must deny his own essence and dependence.

These fundamental points of the Constitution I have presumed, Sir, candidly and righteously to discuss, as a duty peculiarly incumbent on me, as one of the hereditary Guardians of the State, on *principles* which I have ever invariably avowed and adhered to; impressed with a full persuasion of the force of that well-known, inviolable adage.

Magna est veritas, et prævalebit.

I am, Sir,

With proper deference and respect,

Your obedient humble Servant,

ABINGDON.

